

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DONOVAN FAYEZ-OLABI,

Plaintiff,

-against-

CREDIT ACCEPTANCE CORPORATION,

Defendant.

21-CV-7878 (LTS)

TRANSFER ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who resides in Suffolk County, New York, brings this *pro se* action under the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* He asserts claims arising from the extension of credit to him for the purchase of a used car from a dealer in Copiague, New York. For the following reasons, this action is transferred to the United States District Court for the Eastern District of New York.

DISCUSSION

Under the general venue provision, a civil action may be brought in:

(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

28 U.S.C. § 1391(b). For venue purposes, a “natural person” resides in the district where the person is domiciled. 28 U.S.C. § 1391(c)(1).

A defendant corporation is generally deemed to reside “in any judicial district in which such defendant is subject to the court’s personal jurisdiction with respect to the civil action in question . . .” 28 U.S.C. § 1391(c)(2). Where a state has more than one judicial district, a defendant corporation generally “shall be deemed to reside in any district in that State within

which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State.” 28 U.S.C. § 1391(d).¹

Plaintiff resides in Bayshore, New York, in Suffolk County. (ECF 2 at 1.) It appears from the complaint that in 2014, Plaintiff purchased a used 2003 Nissan from Long Island Auto Find, Inc. in Copiague, Suffolk County, New York. According to the “Retail Installment Contract” attached to the complaint, Plaintiff made a down payment for the car and agreed to finance the remainder of the price at an interest rate of 23.99%. Plaintiff attaches his correspondence with Credit Acceptance Corporation, in which Plaintiff seems to have argued that Credit Acceptance Corporation wrongly reported to consumer credit bureaus that his account was 180 days or more past due. (*Id.* at 21.)

Plaintiff alleges that Defendant Credit Acceptance Corporation is incorporated in and has its principal place of business in Michigan (ECF 2 at 3); Defendant engaged in business with Plaintiff in Suffolk County, New York, and therefore appears to be subject to personal jurisdiction and, for venue purposes, be a resident of the Eastern District of New York. Because Plaintiff alleges that the events or omissions underlying his claim arose outside this District, and makes no allegation that Defendant resides in this District, venue does not appear to be proper in this District under section 1391(b)(1) or (2).

Even if venue were proper here, however, the Court may transfer claims “[f]or the convenience of the parties and witnesses, in the interest of justice.” 28 U.S.C. § 1404(a). “District courts have broad discretion in making determinations of convenience under Section 1404(a) and notions of convenience and fairness are considered on a case-by-case basis.” *D.H.*

¹ In a state with multiple districts, if there is no such district, “the corporation shall be deemed to reside in the district within which it has the most significant contacts.” 28 U.S.C. § 1391(d).

Blair & Co. v. Gottdiener, 462 F.3d 95, 106 (2d Cir. 2006). Moreover, courts may transfer cases on their own initiative. *See Bank of Am., N.A. v. Wilmington Trust FSB*, 943 F. Supp. 2d 417, 426-427 (S.D.N.Y. 2013) (“Courts have an independent institutional concern to see to it that the burdens of litigation that is unrelated to the forum that a party chooses are not imposed unreasonably on jurors and judges who have enough to do in determining cases that are appropriately before them. The power of district courts to transfer cases under Section 1404(a) *sua sponte* therefore is well established.” (quoting *Cento v. Pearl Arts & Craft Supply Inc.*, No. 03-CV-2424, 2003 WL 1960595, at *1 (S.D.N.Y. Apr. 24, 2003)); *see also Lead Indus. Ass’n. Inc. v. OSHA.*, 610 F.2d 70, 79 (2d Cir. 1979) (noting that “broad language of 28 U.S.C. § 1404(a) would seem to permit a court to order transfer *sua sponte*”).

In determining whether transfer is appropriate, courts consider the following factors:

(1) the convenience of witnesses; (2) the convenience of the parties; (3) the locus of operative facts; (4) the availability of process to compel the attendance of the unwilling witnesses; (5) the location of relevant documents and the relative ease of access to sources of proof; (6) the relative means of the parties; (7) the forum’s familiarity with the governing law; (8) the weight accorded to the plaintiff’s choice of forum; (9) trial efficiency; and (10) the interest of justice, based on the totality of circumstances. *Keitt v. N.Y. City*, 882 F. Supp. 2d 412, 459-60 (S.D.N.Y. 2011); *see also N.Y. Marine and Gen. Ins. Co. v. LaFarge No. Am., Inc.*, 599 F.3d 102, 112 (2d Cir. 2010) (setting forth similar factors). A plaintiff’s choice of forum is accorded less deference where plaintiff does not reside in the chosen forum and the operative events did not occur there. *See Iragorri v. United Tech. Corp.*, 274 F.3d 65, 72 (2d Cir. 2001).

Under section 1404(a), transfer appears to be appropriate in this case. The underlying events occurred in Suffolk County, where Plaintiff lives and Defendant resides. Suffolk County

is within the Eastern District of New York. See 28 U.S.C. § 112(c). Venue is therefore proper in the Eastern District of New York. *See* 28 U.S.C. § 1391(b). Based on the totality of the circumstances, the Court concludes that it is in the interest of justice to transfer this action to the United States District Court for the Eastern District of New York. 28 U.S.C. § 1404(a).

CONCLUSION

The Clerk of Court is directed to transfer this action to the United States District Court for the Eastern District of New York. Whether Plaintiff should be permitted to proceed further without prepayment of fees is a determination to be made by the transferee court. A summons shall not issue from this Court. This order closes the case in the Southern District of New York.

The Court certifies, under 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962). The Clerk of Court is further directed to mail a copy of this order to Plaintiff and note service on the docket.

SO ORDERED.

Dated: September 23, 2021
New York, New York

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge